## REMARKS

Claims 1-3 and 6-13 were rejected under 35 U.S.C. §102(b) as being anticipated by Fischel-Ghodsian. The Examiner argued that adhesive between adjacent sides of the solid layer and the barrier layer should be construed broadly enough to encompass adhesive mixed within the solid layer for holding the solid layer to the barrier layer. Due to the broad construction of claim 1, the Examiner maintained that Applicant's argument did not overcome the Fischel-Ghodsian reference. Applicant herewith amends claims 1 and 23 to specify an adhesive "layer" between adjacent sides of the solid layer and the barrier layer. Given the method by which Fischel-Ghodsian makes its device, it would not be desirable to include an adhesive layer in between the barrier layer and the active solid layer. Applicant submits that the prior art provides no incentive for modifying the Fischel-Ghodsian device and further modifying the Fischel-Ghodsian method for making the device in order to add an adhesive layer that is not taught by Fischel-Ghodsian.

Fischel-Ghodsian teaches away from providing an adhesive layer next to the solid layer having a volatile agent. Fischel-Ghodsian expressed deep concern with respect to the effect of the volatile agent on the effectiveness of the adhesive. To the extent that an adhesive layer is used by Fischel-Ghodsian, it is on the opposite side of the impermeable backing layer. The adhesive used by Fischel-Ghodsian is for applying the device to skin, clothing or other surface. The adhesive in Fischel-Ghodsian is provided between a release liner and the backing material. Fischel-Ghodsian warns against allowing the adhesive layer to come in contact with the active layer. More specifically, the patent states "The backing material prevents the diffusing active compound from diffusing into the adhesive layer 38 and diminishing the effectiveness of the adhesive by solubilizing it or destroying the surface-adhesive bond." (Column 8, lines 4-8) Fischel-Ghodsian teaches that in order to make the device, the active reservoir layer is applied directly to the impermeable backing layer. No adhesive intervenes.

Fischel-Ghodsian teaches four ways of binding the reservoir layer and the impermeable layer: (i) the reservoir layer itself is tacky; (ii) using a clip to bind the layers; (iii) using adhesive applied to the edges; or (iv) using heat or solvent sealing techniques to seal the edges. There is no teaching or suggestion anywhere in Fischel-Ghodsian of using "an adhesive layer between adjacent sides of the solid layer and the barrier layer" as required by claim 1. Rather, Fischel-

Ghodsian teaches away from allowing the adhesive to come in contact with the active layer. Fischel-Ghodsian cannot anticipate nor make obvious claim 1.

If one were to follow Fischel-Ghodsian methods in which the active reservoir layer is formed directly on the barrier layer, an adhesive layer would be impracticable. To apply an adhesive layer to the barrier layer, followed by a liquid mixture on top of the adhesive, would permit intermixing of the adhesive and liquid mixture. This may cause contamination of the reservoir layer or limit the ability of the adhesive to bind the reservoir layer and the impermeable layer together. Moreover, the adhesive mixed in with the active layer may adversely effect the diffusion rate of the volatile agent.

Applicant teaches a method that avoids the problems and limitations of the prior art. The method taught by Applicant for making the invention of claim 1 involves applying the liquid mixture to the breathable layer. The volatile containing liquid cools and forms a solid layer on the breathable layer. Adhesive can then be advantageously applied between the cool solid layer and the barrier layer. Thus, not only does the text of Fischel-Ghodsian teach away from an adhesive layer as claimed by Applicant, but the methods taught by Fischel-Ghodsian are incompatible with such a construction as well. For all these reasons, Applicant submits that the claims fully distinguish over Fischel-Ghodsian and should be allowed.

Claims 4 and 5 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Fischel-Ghodsian and further in view of Fujita et al. and Sweeney. The claims, dependent from claim 1, are patentable, because none of the references, alone or in combination, teach the required element of "an adhesive layer between adjacent sides of the solid layer and the barrier layer."

As discussed earlier, Fischel-Ghodsian does not teach the required adhesive layer of claim 1. Fujita is directed toward a formulation for controlled release composition. The patent mentions that the composition may be used in combination with various substrates (See column 5, lines 8-45). The patent does not teach (i) a patch; or (ii) using adhesive, as required by claim 1.

Sweeney is directed toward a gel type fragrant composition. The composition may be prepared in trays, or in molds to form gel blocks (page 6, lines 3-18). Sweeney does not teach (i) a patch; or (ii) using adhesive as required by claim 1. These references do not teach a patch within an adhesive layer between adjacent sides of a solid layer and a barrier layer, as required

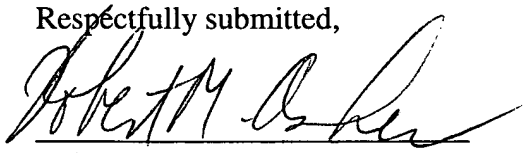
by claim 1. Thus, a prima facie case of obviousness cannot be established for claim 1. Claims 4 and 5 depend from claim 1 and thus are not obvious for substantially the same reasons.

Claims 24 and 32 stand rejected under 35 U.S.C. §103 (a) as being unpatentable over Fischel-Ghodsian. These claims depend from claim 1 and should be allowed at least for the same reasons recited above with respect to claim 1.

Claims 23 and 25-31 stand rejected under 35 U.S.C. §103 (a) as being unpatentable over Fischel-Ghodsian in view of Fujita et al. and Sweeney. Claim 23 has now been amended to recite "an adhesive layer between adjacent sides of a solid layer and a barrier layer." Thus as amended, claim 23 is allowable for the reasons recited above with respect to claim 1. Furthermore with respect to claim 23, the Examiner has not shown in the art that it was known to form a solid layer upon a breathable layer. For this additional reason, claim 23 and all claims dependent therefrom should be allowed.

Given the broad reading of the pre-amended claims to encompass adhesive mixed in with the solid layer, Applicant submits that the present amendment reciting an adhesive layer in combination with the other elements of the claimed patch patentably distinguishes over the art of record. The application is believed to be in condition for allowance and early notice to that effect is respectfully solicited.

Respectfully submitted,



Robert M. Asher
Registration No. 30,445
Attorney for Applicants

Bromberg & Sunstein LLP
125 Summer Street
Boston, MA 02110-1618
(617) 443-9292

01581/00130 353131.1